



## DELTA STEWARDSHIP COUNCIL

A California State Agency

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June 21, 2013

Dan Riordan  
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Via email: [dan.riordan@water.ca.gov](mailto:dan.riordan@water.ca.gov)

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Dear Mr. Riordan:

We have reviewed the Notice of Preparation (NOP) for the Prospect Island Tidal Habitat Restoration Project Environmental Impact Report (EIR). We welcome the opportunity to provide input regarding how to ensure the consistency of the Prospect Island Project with the Delta Plan, which was adopted on May 16, 2013. Furthermore, DSC Science Program staff has participated in Cache Slough Technical Team discussions and facilitated expert panel deliberations on alternative designs for the Prospect Island Project using the DRERIP conceptual models. We appreciate the opportunity to comment on the NOP and look forward to continued coordination between our agencies to further our related efforts.

As you may know, in 2009 the California Legislature created the Delta Stewardship Council (DSC) to play a synthesizing and coordinating role among the many agencies and interest groups who have a stake in the Delta's future. The DSC was also tasked with developing, adopting and implementing the Delta Plan. The Delta Plan is an enforceable plan to further the achievement of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The DSC sets state policy for the Delta through the Delta Plan and coordinates state and local agencies to achieve policy objectives. In addition, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which state and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that state and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

It is important to note that not all actions that occur in whole or in part in the Delta are covered actions. For the Department of Water Resources to determine whether the proposed Prospect Island Project is a covered action under the Delta Plan and therefore subject to the regulatory provisions in the plan, it must start with the Delta Reform Act, which defines a covered action as (Water Code section 85057.5(a)):

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*"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."*

– CA Water Code §85054

*...a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:*

- 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;*
- 2. Will be carried out, approved, or funded by the state or a local public agency;*
- 3. Is covered by one or more provisions of the Delta Plan;*
- 4. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.*

We encourage you to participate in early consultation with DSC staff. We can assist you in determining whether or not the project is a covered action, and if so, we can review the consistency of the proposed action with the Delta Plan's policies and make recommendations, as appropriate<sup>1</sup>.

The DSC staff's review of the NOP for the Prospect Island Project identified the following policies<sup>2</sup> to consider in order to ensure consistency with the Delta Plan. In addition, we recommend that DWR consider these policies, as appropriate, in its environmental analysis and its evaluation of alternatives in the EIR.

- **Best available science and adaptive management.** The proposed project would restore emergent wetlands and subtidal habitats on the approximately 1600 acres of Prospect Island. The NOP states that the project is intended to partially fulfill the 8,000-acre tidal habitat restoration obligations of DWR under the federal biological opinions regarding delta smelt and salmonids for the operation of the state and federal water projects. The project also could help meet the habitat restoration goals of the proposed Bay Delta Conservation Plan, if and when it is approved.

We understand that this project is currently a component of the Fish Restoration Program Agreement (FRPA) between DWR and the Department of Fish and Wildlife (DFW). The *FRPA Implementation Strategy* (DWR and DFW in coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, 2012) states that an adaptive management plan consistent with the framework described in the Delta Plan will be developed for each restoration action.

Delta Policy G P1 (23 CCR Section 5002) specifies what must be addressed in a certification of consistency filed by a state or local public agency with regard to a covered action. As relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Appendix 1A of the Delta Plan regulations). Ecosystem restoration covered actions **must** include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through:

- An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

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<sup>1</sup> Delta Stewardship Council. 2013. Delta Plan, Appendix B, Administrative Procedures Governing Appeals, Statutory Provisions Requiring Other Consistency Reviews, and other Forms of Review or Evaluation by the Council.

<sup>2</sup> In order to become legally binding, the Delta Plan policies must be approved as regulations by the Office of Administrative Law. Each policy is therefore referenced by both its Delta Plan policy number and its regulatory code section number. The DSC expects the regulations to go into effect no later than October 1, 2013.



- Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

The DSC staff looks forward to continue collaboration with DWR, DFW and others to support the use of best available science and the development of a robust adaptive management plan for this project.

- **Habitat restoration.** The NOP states that the objectives of the Prospect Island Project include enhancing food availability for native fishes; increasing salmonid rearing habitat; increasing habitat to support other listed species; enhancing water quality, recreation and carbon sequestration; promoting resiliency to climate change and other future conditions; and avoiding promotion of conditions that would favor the establishment or spread of nonnative invasive species. DWR should verify that these objectives are consistent with Delta Plan Policy ER P2 (23 CCR Section 5006), which calls for restoring habitats at appropriate elevations and in a manner consistent with Appendix 3, which is Section III of the California Department of Fish and Wildlife's *Draft Conservation Strategy for the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Region* (DFG 2011).
- **Nonnative invasive species.** As mentioned above, one of the project objectives is to avoid promotion of conditions that would favor nonnative species. Please verify that the project will be consistent with Delta Plan Policy ER P5 (23 CCR Section 5009), which states that the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.
- **Respect local land use.** Concerns have been raised regarding the potential adverse effects of the proposed project on adjacent land, such as increases in Ryer Island groundwater levels, increased scour on the Ryer Island Miner Slough levee, and increased flood risk. Please verify that these concerns will be addressed in a manner consistent with Delta Plan Policy DP P2 (23 CCR Section 5011). This policy states that ecosystem restoration projects must be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence when feasible, considering comments from local agencies and the Delta Protection Commission. (Because the project is located entirely on public land, it is consistent with the part of DP P2 that calls for plans for ecosystem restoration to consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased.)
- **Flood risk reduction.** The Prospect Island Project should reduce, or at least not increase, flood risk. The Delta Plan contains two policies that may be relevant to DWR's consideration of this issue: Policy RR P3 restricts encroachments in floodways, and Policy RR P4 restricts encroachments in floodplains.

We have the following additional recommendations regarding ways in which the Prospect Island Project could further promote the achievement of the coequal goals.

- **Habitat restoration.** Delta Plan Recommendation ER R2 states that the habitat restoration project should ensure connections between areas being restored and existing habitat areas and other elements of the landscape needed for the full life cycle of the species that will benefit from the restoration project. Where possible, projects should improve water quality. Project proponents should follow best practices for mosquito abatement. In addition, ER R2 specifically

recommends enhancing the ability of the Yolo Bypass to flood more frequently to provide more opportunities for migrating fish, especially Chinook salmon, to use this system as a migration corridor that is rich in cover and food.

- **Recreation on public lands.** Delta Plan Recommendation DP R11 calls for water management and ecosystem restoration agencies to provide recreation opportunities, including visitor-serving business opportunities, at new facilities and habitat areas whenever feasible. Recommendation DP R14 calls on DFW, in cooperation with other public agencies, to collaborate with nonprofits, private landowners, and business partners to expand wildlife viewing, angling and hunting opportunities. Recommendation DP R16 states that public agencies owning land should increase opportunities, where feasible, for bank fishing, hunting, levee-top trails, and environmental education.
- **Water quality.** The NOP states that the EIR will evaluate both short-term and long-term water quality impacts. Delta Plan Recommendation WQ R1 states that water quality in the Delta should be maintained at a level that supports, enhances, and protects beneficial uses identified in the applicable State Water Resources Control Board or regional water quality control board water quality control plans. Delta Plan Recommendation WQ R2 states that covered actions should identify any significant impacts to water quality.
- **Protecting the Delta as place.** The Prospect Island Project should contribute to protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta. Delta Plan Recommendation DP R17 calls for enhancing opportunities for visitor-serving businesses.

We look forward to working with you and your staff to ensure consistency of the Prospect Island Project with the Delta Plan. If you have any questions, please contact Jessica Davenport at [jdavenport@deltacouncil.ca.gov](mailto:jdavenport@deltacouncil.ca.gov) or (916) 445-2168.

Sincerely,



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Deputy Executive Officer, Planning

cc: Phil Isenberg, Chair, DSC  
DSC Council Members  
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